

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

OWEN BELL)	
Plaintiff,)	
v.)	CASE NO. 3:17-cv-642
)	Chief Judge Crenshaw
ED WALLACE, III & Co.)	Magistrate Judge Frensley
Defendant.)	

REPORT AND RECOMMENDATION

Pending before the Court is a Motion to Dismiss filed by Defendant Ed Wallace II & Co. (Docket No. 4) with supporting memorandum (Docket No. 5). For the reasons stated herein, the undersigned recommends that the Defendant's Motion be GRANTED.

The Complaint in this matter was filed pro se by Owen Bell asserting various causes of action arising out of a prior lawsuit in which the Defendant was an attorney of record for a party adverse to Mr. Bell in that litigation. The Defendant asserts that the complaint should be dismissed pursuant to Fed. R. of Civ. P. 12(h)(3) based on a lack of subject matter jurisdiction. Docket No.4. Specifically, Defendant argues that the claims assert in the complaint of conspiracy, intentional misrepresentations, fraud, defamation, malicious prosecution and multiple intentional falsifications made during the March 2014 trial in case no. 3:11-0674 are all state law tort claims. Docket No. 5, pp. 2-4. Defendant likewise asserts that there is no diversity jurisdiction because Mr. Bell, Mr. Wallace and the law firm for which Mr. Wallace worked are all residents of Tennessee. *Id.* at p. 3.


The Court granted a Motion for Substitution of Bankruptcy Trustee as the real party in interest based upon Plaintiff's listing of his claim as property of the estate on his bankruptcy schedules in the United States Bankruptcy Court for the Middle District of Tennessee. Docket

No. 19.

The Trustee has filed a response to the Defendant's Motion to Dismiss wherein he asserts that he has reviewed the Defendants' motion and investigated the matter and "finds no basis to oppose Defendant's motion." Docket No. 21.

Because the complaint fails to allege any federal claims and because there is not diversity of citizenship between the parties and the real party in interest has indicated there is no opposition to the Defendant's Motion to Dismiss the undersigned recommends that the Motion to Dismiss (Docket No.4) be GRANTED.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any response to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986).


JEFFERY S. FRENSLEY
U. S. Magistrate Judge